

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "010888,".

§ 520.2345a [Amended]

5. Section 520.2345a *Tetracycline hydrochloride capsules* is amended in paragraph (b)(1) by removing "Nos. 000009 and 000693" and replacing it with "No. 000009".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

6. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

7. Section 558.274 *Hygromycin B* is amended in paragraph (a)(4) by removing "050568," and in the table in paragraph (c)(1), under the heading "Sponsor," in entries (i) and (ii) by removing "050568,".

Dated: October 31, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94-28331 Filed 11-16-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 904****Arkansas Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Arkansas regulatory program (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Arkansas proposed revisions to the Arkansas statute pertaining to the small operator's assistance program (SOAP). The amendment is intended to revise the Arkansas program to be consistent with SMCRA and incorporate the additional flexibility afforded by SMCRA, as amended by the Energy Policy Act of 1992 (Pub. L. 102-486).

EFFECTIVE DATE: November 17, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:**I. Background on the Arkansas Program**

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, *Federal Register* (45 FR 77003). Subsequent actions concerning Arkansas' program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Proposed Amendment

By letter dated March 31, 1993, Arkansas submitted a proposed amendment to its program to SMCRA (administrative record No. AR-496). The proposed amendment relates to financial assistance to small operators. Arkansas submitted the proposed amendment at its own initiative with the intent of making its program consistent with SMCRA, as amended by the Energy Policy Act of 1992 (Pub. L. 102-486). Arkansas proposed to amend the Arkansas Surface Coal Mining and Reclamation Act of 1979 at Arkansas Code Annotated (ACA) 15-58-104(11), by redefining the term "small operator," and ACA 15-58-503(a)(2), by expanding the permitting activities eligible for funding under SOAP.

OSM announced receipt of the proposed amendment in the April 22, 1993, *Federal Register* (58 FR 21552; administrative record No. AR-500) and in the same document opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on May 24, 1993. No substantive comments were received. The public hearing, scheduled for May 17, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to, among other things, SOAP funding for (1) the cost of the preparation of the results of test borings and core samplings at proposed ACA 15-58-503(a)(2)(B) and (2) the development of cross section maps and plans at proposed ACA 15-58-503(a)(2)(D). In addition, OSM required that Arkansas include, at proposed ACA 15-58-503(a)(2), the requirement for a coal operator to reimburse the State for SOAP expenses if the operator's coal production exceeds the allowable limit. OSM notified Arkansas of these

concerns by letter dated June 23, 1993 (administrative record No. AR-507).

By letter dated July 22, 1993, Arkansas responded to OSM's concerns by submitting revisions to its proposed program amendment (administrative record No. AR-505).

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the August 23, 1993, *Federal Register* (58 FR 44477; administrative record No. AR-511). The public comment period closed on September 7, 1993.

During its review of the revised amendment, OSM identified concerns relating to, among other things, the coal operator's liability for reimbursement of the cost of SOAP services at proposed ACA 15-58-503(a)(2). OSM notified Arkansas of these concerns by letter dated October 19, 1993 (administrative record No. AR-513).

By letter dated August 26, 1994, Arkansas responded by submitting additional revisions to its proposed amendment that replaced in their entirety the previously proposed revisions (administrative record No. AR-521).

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the September 29, 1994, *Federal Register* (59 FR 49615; administrative record No. AR-525). The public comment period closed on October 14, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Arkansas on March 31, 1993, and as revised by it on July 22, 1993, and August 26, 1994, is no less stringent than SMCRA, as amended. Thus, the Director approves the proposed amendment.

1. Typographical Errors in Arkansas' Codification at Proposed ACA 15-58-104(11) and ACA 15-58-503(a)

In its August 26, 1994, proposed amendment, Arkansas submitted proposed revisions at paragraph (12) of ACA 15-58-104 and paragraph (c) of ACA 15-58-503. However, in the published ACA, the language that Arkansas has proposed to revise occurs at paragraph (11) of ACA 15-58-104 and paragraph (a) of ACA 15-58-503. In addition, in its proposed amendment as originally submitted on March 31, 1993, and subsequently revised on July 22, 1993, Arkansas submitted revisions at paragraph (a) of ACA 15-58-503.

OSM concluded that these discrepancies occurred as a result of typographical errors and that Arkansas intended to propose revisions at ACA 15-58-104(11) and ACA 15-58-503(a) rather than at ACA 15-58-104(12) and ACA 15-58-503(c) in its August 26, 1994, proposed amendment. For this reason, in findings Nos. 2 through 5 below and elsewhere throughout this document, OSM addresses Arkansas' proposed revisions at ACA 15-58-104(11) and ACA 15-58-503(a).

OSM recommends that when Arkansas promulgates its proposed amendment as submitted on August 26, 1994, Arkansas correct these typographical errors and ensure that it promulgates the correct codification for the proposed revisions to the published ACA.

2. ACA 15-58-104(11), Definition of "Small Operator"

Arkansas proposed revisions to ACA 15-58-104(11), redefining "small operator" to mean

an operator whose probable annual production at all locations will not exceed 300,000 tons of coal per year.

Although there is no counterpart definition in SMCRA, Arkansas' proposed definition is consistent with section 507(c)(1) of SMCRA, which identifies coal operations that qualify for SOAP as those where the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons. Therefore, the Director finds that proposed ACA 15-58-1-104(11) is no less stringent than section 507(c)(1) of SMCRA, and approves it.

3. ACA 15-58-503(a)(2)(A) (i) through (vi), Permitting Activities Eligible for Payment Under SOAP

Arkansas proposed at ACA 15-58-503(a)(2)(A) (i) through (vi) to expand those activities associated with the development of a surface coal mining and reclamation permit application that are eligible for funding under SOAP. As discussed below, Arkansas proposed at ACA 15-58-503(a)(2)(A) (i) through (v) to provide funding under SOAP for certain permitting activities that are included by reference in the counterpart sections 507(c)(1) (A) through (E) of SMCRA. And, as discussed below, Arkansas proposed at ACA 15-58-503(a)(2)(A)(vi) to provide funding under SOAP for certain permitting activities that are substantively identical to the permitting activities identified in the counterpart section 507(c)(1)(F) of SMCRA.

a. ACA 15-58-503(a)(2)(A), *General requirements for activities eligible for funding under SOAP*. Arkansas proposed to revise ACA 15-58-503(a)(2)(A) to (1) add the requirement that the activities specified in proposed ACA 15-58-503(a)(2)(A) (i) through (vi) must be performed by a qualified public or private laboratory or such other public or private qualified entity designated by Arkansas and (2) delete the language that limits the activities eligible for funding under SOAP to the determination of probable hydrologic consequences and preparation of the result of test borings and core samplings. The added requirement is substantively identical to the requirement concerning qualified laboratories or entities in section 507(c)(1) of SMCRA. The deletion of the language concerning the activities that may be funded is consistent with Arkansas' proposed ACA 15-58-503(a)(2)(A) (i) through (vi) and section 507(c)(1) of SMCRA, as amended by the Energy Policy Act.

Therefore, the Director finds that the proposed revisions of ACA 15-58-503(a)(2)(A) are no less stringent than the requirements of section 507(c)(1) of SMCRA, and approves them.

b. ACA 15-58-503(a)(2)(A)(i), *Determination of probable hydrologic consequences*. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(i) that provides funding under SOAP for the costs of the determination of probable hydrologic consequences required by ACA 15-58-503(a)(2)(A), including the engineering analyses and designs necessary for the determination.

Proposed ACA 15-58-503(a)(2)(A)(i) is identical to section 507(c)(1)(A) of SMCRA, with the exception that section 507(c)(1)(A) of SMCRA references the requirements for the determination of probable hydrologic consequences at section 507(b)(11) of SMCRA. Arkansas' existing requirements for the determination of probable hydrologic consequences at referenced ACA 15-58-503(a)(2) are substantively identical to the requirements at referenced section 507(b)(11) of SMCRA.

Therefore, the Director finds that the requirements of proposed ACA 15-58-503(a)(2)(A)(i) are substantively identical to and no less stringent than the requirements of sections 507(c)(1)(A) and 507(b)(11) of SMCRA. The Director approves the proposed requirements.

c. ACA 15-58-503(a)(2)(A)(ii), *Development of cross-sections, maps, and plans*. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(ii) that provides funding

under SOAP for the costs of the development of permit application cross-sections, maps, and plans of land to be affected by a surface coal mining and reclamation permit. Arkansas proposed at ACA 15-58-503(a)(2)(A)(ii) to (1) require that these cross-sections, maps, and plans

shall be prepared by or under the direction of a qualified registered professional engineer or geologist with assistance from experts in related fields such as land surveying and landscape architecture,

and (2) specify certain information that must be depicted in the cross-sections, maps, and plans.

Section 507(c)(1)(B) of SMCRA provides funding under SOAP for the costs of the development of permit application cross-sections, maps, and plans of land to be affected by a surface coal mining and reclamation permit. Section 507(c)(1)(B) of SMCRA references the requirements for the development of cross-sections, maps, and plans at section 507(b)(14) of SMCRA.

Arkansas proposed requirements at ACA 15-58-503(a)(2)(A)(ii) that are, with one exception, substantively identical to the requirements for cross-sections, maps, and plans in section 507(c)(1)(B) of SMCRA and referenced section 507(b)(14) of SMCRA. The exception is that Arkansas' proposed ACA 15-58-503(a)(2)(A)(ii) does not require that the cross-sections, maps, and plans be certified by a qualified registered professional engineer, or professional geologist as does section 507(b)(14) of SMCRA. However, in its regulations at section 779.25(l) of the Arkansas Surface Mining and Reclamation Code, Arkansas requires that all maps required by section 779.25, which includes those same features required to be depicted by the cross-sections, maps, and plans in proposed ACA 15-58-503(a)(2)(A)(ii), must be

prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Director.

Therefore, the Director finds that the requirements of proposed ACA 15-58-503(a)(2)(A)(ii), in conjunction with the requirements of section 779.25(l) in the Arkansas regulations, are substantively identical to and no less stringent than the requirements of sections 507(c)(1)(B) and 507(b)(14) of SMCRA. The Director approves the proposed requirements.

d. ACA 15-58-503(a)(2)(A)(iii), *Geologic drilling and statement of results of test borings and core*

samplings. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(iii) that provides funding under SOAP for the costs of geologic drilling and the statement of results of test borings and core samplings from the permit area, including logs of drill holes; the thickness of the coal seam found, and analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic-forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined. Proposed ACA 15-58-503(a)(2)(A)(iii) also provides that its provisions may be waived by the Director of the Arkansas Department of Pollution Control and Ecology with respect to a specific application by a written determination that such requirements are unnecessary.

Section 507(c)(1)(C) of SMCRA provides for the funding of geologic drilling and the statement of results of test borings and core samplings required by section 507(b)(15) of SMCRA. Section 507(b)(15) of SMCRA requires that a permit application include a statement of the result of test borings or core samplings from the permit area, including logs of drill holes; the thickness of the coal seam found, and analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic-forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined. Section 507(b)(15) of SMCRA also states that its provisions may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary.

The Director finds that the requirements of proposed ACA 15-58-503(a)(2)(A)(iii) are substantively identical to and no less stringent than the requirements of sections 507(c)(1)(C) and 507(b)(15) of SMCRA. The Director approves the proposed requirements.

e. ACA 15-58-503(a)(2)(A)(iv), *Collection of archaeological information*. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(iv) that provides funding under SOAP for the costs of the collection of archaeological information and any other historical information needed to prepare accurate maps to an appropriate scale clearly showing all manmade features and significant known archaeological sites existing on the date of the application and the preparation of plans necessitated thereby.

Section 507(c)(1)(D) of SMCRA provides for funding of the collection of archaeological information required by section 507(b)(13) of SMCRA and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby. Section 507(b)(13) of SMCRA requires accurate maps that include all manmade features and significant known archaeological sites existing on the date of application.

Section 507(b)(13) of SMCRA also requires maps or plans that shall, among other things specified by the regulatory authority, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within 1000 feet of the permit area. These additional maps and plans are extraneous to the requirements at section 507(c)(1)(D) of SMCRA concerning SOAP funding for the collection of archaeological information. Therefore, the fact that these other maps or plans are not included for SOAP funding at proposed ACA 15-58-503(a)(2)(A)(iv) is consistent with the provisions for SOAP funding under section 507(c)(1)(D) of SMCRA.

Based on the above discussion, the Director finds that the provisions of proposed ACA 15-58-503(a)(2)(A)(iv) are no less stringent than the provisions of sections 507(c)(1)(D) and 507(b)(13) of SMCRA, and approves them.

f. ACA 15-58-503(a)(2)(A)(v), *Preblast surveys*. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(v) that provides funding under SOAP for the costs of preblast surveys requested by residents or owners of manmade dwellings or structures within 1/2 mile of any portion of the permitted area. Proposed ACA 15-58-503(a)(2)(A)(v) also requires that the applicant or permittee shall conduct the preblast survey of such structures and submit the survey to the Director of the Arkansas Department of Pollution Control and Ecology and a copy to the resident or owner making the request.

Section 507(c)(1)(E) of SMCRA provides for the funding of preblast surveys required by section 515(b)(15)(E) of SMCRA. Section 515(b)(15)(E) of SMCRA requires that, upon the request of a resident or owner of a manmade dwelling or structure within 1/2 mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request.

The Director finds that the requirements of proposed ACA 15-58-503(a)(2)(A)(v) are substantively identical to and no less stringent than the requirements of sections 507(c)(1)(E) and 515(b)(15)(E) of SMCRA. The Director approves the proposed requirements.

g. ACA 15-58-503(a)(2)(A)(vi), *Collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values*. Arkansas proposed to add a new paragraph at ACA 15-58-503(a)(2)(A)(vi) that provides funding under SOAP for the costs of the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values.

Arkansas' proposed provision is substantively identical to section 507(c)(1)(F) of SMCRA. Therefore, the Director finds that proposed ACA 15-58-503(a)(2)(A)(vi) is no less stringent than section 507(c)(1)(F) of SMCRA, and approves it.

4. ACA 15-58-503(a)(2)(B), *The Cost of Training and the Obligation to Ensure That Qualified Coal Operators Are Aware of SOAP Assistance*

Arkansas proposed a new paragraph at ACA 15-58-503(a)(2)(B) concerning the responsibility to (1) provide or assume the costs of training coal operators that meet the qualifications under SOAP regarding the preparation of permit applications and compliance with the regulatory program, and (2) ensure that qualified coal operators are aware of the available assistance.

Section 507(c)(2) of SMCRA states that the Secretary of the Interior shall provide or assume the cost of training coal operators that meet the qualification stated in section 507(c)(1) of SMCRA concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection. With two exceptions, which are discussed below, proposed ACA 15-58-503(a)(2)(B) is substantively identical to section 507(c)(2) of SMCRA.

The first exception is that, at proposed ACA 15-58-503(a)(2)(B), Arkansas specifies that it is the Arkansas Department of Pollution Control and Ecology's responsibility rather than the Secretary of the Interior's responsibility to provide or assume the cost of training operators and ensure that operators are aware of the available assistance. OSM is provisionally interpreting section 507(c)(2) of SMCRA

to specify that it is a requirement for State regulatory authorities in primacy states to assume these responsibilities. OSM intends to clarify this requirement when it promulgates implementing rules.

The second exception is that, at proposed ACA 15-58-503(a)(2)(B), Arkansas uses the term "small operator" in place of the phrase "coal operators that meet the qualifications stated in [section 507(c)(1)]" that is used in section 507(c)(2) of SMCRA. As discussed in finding No. 2 above, Arkansas' proposed definition of "small operator" is consistent with section 507(c)(1) of SMCRA.

Therefore, the Director finds that proposed ACA 15-58-503(a)(2)(B) is no less stringent than the requirements of section 507(c)(2) SMCRA, and approves it.

5. ACA 15-58-503(a)(2)(C), *An Operator's Obligation to Reimburse the Department for the Cost of the Services Rendered under SOAP*

Arkansas proposed a new paragraph at ACA 15-58-503(a)(2)(C) that requires a coal operator that has received assistance under SOAP to reimburse the State for the cost of the services rendered if Arkansas finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Proposed ACA 15-58-503(a)(2)(C) is substantively identical to section 507(h) of SMCRA. Therefore, the Director finds that proposed ACA 15-58-503(a)(2)(C) is no less stringent than section 507(h) of SMCRA, and approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received (administrative record Nos. AR-507, AR-513, and AR-525).

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Arkansas program (administrative record Nos. AR-497, AR-506, and AR-523).

The U.S. Bureau of Land Management responded on April 19, 1993, that its management responsibilities would not be impacted by the proposed amendment (administrative record No. AR-498).

The U.S. Bureau of Mines responded on April 27 and August 11, 1993, and October 12, 1994, that it had no comments (administrative record Nos. AR-499, AR-508, AR-528).

The U.S. Soil Conservation Service responded on May 5 and August 10, 1993, and October 24, 1994, that it had no comments (administrative record Nos. AR-501, AR-509, and AR-530).

The U.S. Fish and Wildlife Service (FWS) responded on May 11, 1993, that, because the proposed amendment should provide for improved fish and wildlife protection plans and increased reclamation efforts on abandoned mined lands, it concurred with it (administrative record No. AR-502). Additionally, the U.S. FWS responded on October 12, 1994, that it had no comments (administrative record No. AR-527).

The U.S. National Park Service responded on May 14, 1993, that it had no comments (administrative record No. AR-503).

The U.S. Forest Service responded on May 14, 1993, that it had no comments (administrative record No. AR-504).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Pursuant to 732.17(h)(11)(i), OSM is required to solicit comments on the proposed amendment from EPA.

None of the revisions that Arkansas proposed to make in its amendment pertain to air or water quality standards.

Therefore, OSM did not request EPA's concurrence. OSM did solicit comments from EPA on the proposed amendment (administrative record Nos. AR-497, AR-506, and AR-523).

EPA responded on October 25, 1993, that because the amendment demonstrates legal authority, administrative capability, and technical conformity with controlling National Pollutant Discharge Elimination System regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended, it concurred with the

proposed amendment (administrative record No. AR-514).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record Nos. AR-497, AR-506, and AR-523). The ACHP did not respond to OSM's request.

SHPO responded on August 27, 1993, that, although the revisions did not directly address cultural resources issues in Arkansas, it wanted to remind OSM of the need to be responsive to section 106 of the National Historic Preservation Act of 1966, as amended (NHPA, administrative record No. AR-510). SHPO further commented that because NHPA requires Federal agencies to give due consideration to historic properties when those historic properties may be affected by the undertakings of the agency, surface mining activities that may have the result of affecting historic properties should be submitted to its office for review and comment prior to their commencement.

As SHPO is aware, the NHPA definition of "undertaking" at 16 U.S.C. section 470w(7) was expanded by 1992 amendments to include those projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including, among other things, "those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency" (see 16 U.S.C. section 470w(7)(D)). This new statutory language encompasses State permitting actions carried out under SMCRA. As a result of the 1992 NHPA amendments, OSM has taken action to clarify that the State permitting activities are Federal undertakings subject to the section 106 review and consultation requirements of NHPA. OSM, in conjunction with ACHP, the National Council of SHPO's, and others, has developed a draft programmatic Agreement as the preferred alternative for implementing OSM's responsibilities under the 1992 NHPA amendments. The draft agreement has undergone public review and the agencies involved in its development are currently reviewing public comments. Upon completion, the agreement will assist OSM, through coordination with the States, in fulfilling OSM's responsibilities under section 106 of NHPA.

V. Director's Decision

Based on the above findings, the Director approves Arkansas' proposed

amendment as submitted on March 31, 1993, and as revised on July 22, 1993, and August 26, 1994.

The Director approves the statutes as proposed by Arkansas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 904, codifying decisions concerning the Arkansas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.15 is revised to read as follows:

§ 904.15 Approval of amendments to the Arkansas regulatory program.

Revisions to and/or addition of the following provisions of the Arkansas Surface Coal Mining and Reclamation Act of 1979, as submitted to OSM on March 31, 1993, and revised on July 22, 1993, and August 26, 1994, are approved effective November 17, 1994. Arkansas Code Annotated (ACA) 15-58-104(11), definition of "small operator;" ACA 15-58-503(a)(2)(A), activities associated with the development of a surface coal mining and reclamation permit application that are eligible for

funding under the small operator's assistance program (SOAP); ACA 15-58-503(a)(2)(B), the responsibility for training coal operators that meet the SOAP qualifications regarding the preparation of permit applications, and ensuring that qualified coal operators are aware of the available assistance; and ACA 15-58-503(a)(2)(C), an operator's obligation to reimburse the Arkansas Department of Pollution Control and Ecology for the cost of the services rendered under SOAP.

[FR Doc. 94-28444 Filed 11-16-94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5106-3]

Protection of Stratospheric Ozone: Leak Repair; Partial Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of final rule.

SUMMARY: This action promulgates a temporary stay of certain federal rules requiring the repair and/or retrofit of appliances containing ozone-depleting substances contained in the regulations implementing the National Recycling Program. EPA has already issued an action staying the effectiveness of 40 CFR 82.156(i), as they apply to industrial process refrigeration equipment only, including the applicable compliance dates, for a period of three months, pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule during reconsideration (August 17, 1994, 59 FR 42169).

This action promulgates a partial stay of the effectiveness of 40 CFR 82.156(i), and applicable compliance dates, beyond the three months pursuant to Clean Air Act sections 301(a)(1), 42 U.S.C. 7601(a)(1), but only to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rules in question.

DATES: Effective December 16, 1994.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-92-01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500. Dockets may be

inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Cynthia Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460, (202)233-9729. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Background
- II. Rules To Be Stayed and Reconsidered
- III. Issuance of a Three-Month Stay
- IV. Proposed Additional Temporary Stay
- V. Comments Received
- VI. Response to Comments
- VII. Effective Date

I. Background

On July 13, 1993, the Chemical Manufacturers Association (CMA) sent to the United States Environmental Protection Agency (EPA) a petition for reconsideration of the Refrigerant Recycling Rule, promulgated May 14, 1993, (58 FR 28660), particularly the leak repair provisions under 40 CFR 82.156(i) as they concern industrial process refrigeration equipment.¹ On that same date, CMA filed a petition in the United States Court of Appeals for the District of Columbia Circuit seeking review of this Refrigerant Recycling Rule (*Chemical Manufacturers Association v. Browner, et al.*, D.C. Cir. Docket 93-1444.) As part of a settlement agreement signed by EPA and the CMA on May 20, 1994, EPA agreed to propose changes to the appropriate sections of the rules. A notice of the settlement agreement was published on June 14, 1994 (59 FR 30584), pursuant to the Clean Air Act section 113(g). Although several comments regarding the settlement agreement were submitted during the notice and comment period, none of them opposed the settlement or suggested that EPA not revise the regulation.

The settlement agreement set a tight deadline for the completion of rulemaking, requiring EPA to propose

changes by December 1, 1994,² and to take final action by June 1, 1995. EPA has issued a temporary stay of § 82.156(i) as it relates to industrial process equipment, and initiated reconsideration of this provision.

II. Rules To Be Stayed and Reconsidered

Final regulations published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the service, repair, and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations should substantially reduce the emissions of ozone-depleting refrigerants. The petition filed by the CMA seeks for reconsideration of leak repair provisions under § 82.156(i) as they relate to industrial process refrigeration equipment. In particular, the petitioners raised concerns regarding the ability to repair or retrofit some industrial process refrigeration equipment within the timeframes established by the final rule. CMA's concerns involve the need to shut down equipment and/or obtain custom built parts within the appropriate timeframes. CMA also raised the possibility of delays caused by other regulatory requirements related to changes at plants.

EPA has evaluated information contained in CMA's petition and is now reconsidering the leak repair provisions. Moreover, EPA believes that this information warrants review and response pursuant to section 307(d)(7)(B) of the Clean Air Act. In order to review and evaluate the ability of the owners and operators of industrial process refrigeration equipment to comply with the leak repair provisions when extenuating circumstances exist, EPA will reconsider the regulatory requirements applicable to repairing leaks in accordance with section 307(d) of the Clean Air Act.

III. Issuance of a Three-Month Stay

On August 17, 1994, EPA issued a three-month administrative stay effective September 16, 1994, of provisions of § 82.156(i) as they apply to industrial process refrigeration equipment, including all applicable

compliance dates. These provisions had been promulgated as final federal rules requiring the reduction of emissions of ozone-depleting substances during the servicing and disposal of air-conditioning and refrigeration equipment (August 17, 1994, 59 FR 42169). EPA is reconsidering these rules, as discussed above and, following the notice and comment procedures of section 307(d) of the Clean Air Act, will take appropriate action.³

IV. Proposed Additional Temporary Stay

EPA will not be able to complete the reconsideration (including any appropriate regulatory action) of the rules stayed by the Administrator within the three-month period expressly provided in section 307(d)(7)(B). That stay will expire on December 16, 1994. Therefore, EPA believes it is appropriate to extend temporarily the stay of the effectiveness of the leak repair requirements for industrial process refrigeration and applicable compliance dates from December 16, 1994, until EPA completes final rulemaking action upon reconsideration.

Because the settlement agreement between EPA and CMA set a tight deadline for the completion of the rulemaking, EPA is reconsidering the rules in question as expeditiously as practicable. However, EPA will not be able to complete the reconsideration process during the three-month administrative stay of these regulations. EPA will not be able to issue proposed action, seek public comment, and take final action before the temporary stay expires on December 16, 1994.

As proposed, this action will only remain effective to the extent necessary to complete reconsideration of the rules in question. The settlement agreement between EPA and CMA expressly requires that final action regarding reconsideration be signed by June 1, 1994. Therefore, the stay would expire when the final action regarding the reconsideration of the leak repair requirements become effective.

V. Comments Received

EPA received five comments concerning the proposal to extend the

¹ Industrial process refrigeration is defined in § 82.152(g) of the final regulations (58 FR 28713). The definition states that "industrial process refrigeration means, for the purposes of § 82.156(i), complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. This sector also includes industrial ice machines and ice rinks."

² The settlement agreement originally specified that a proposal be signed by September 1, 1994. Through a subsequent modification to the settlement agreement this date was revised.

³ If, after reconsideration of these provisions, EPA determines that it is appropriate to impose leak repair requirements that are stricter than the existing rules, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Any EPA proposal regarding changes to the leak repair requirements and the appropriate compliance period would be subject to the notice and comment procedures of Clean Air Act section 307(d).

administrative stay beyond the three months expressly provided in section 307(d)(7)(B). All the commenters agreed with the need for such an extension. Two comments discussed some of the specific reasons why it is not practical for the owners and operators of industrial process refrigeration equipment to comply with the requirements originally promulgated under § 82.156(i). The reasons included, but were not limited to:

- the need for a process shutdown in order to complete certain repairs;
- delays stemming from compliance with other applicable federal, state, or local regulations; and
- the inability to receive the necessary parts and/or appropriate replacement refrigerant within the specified times.

In addition, one commenter addressed the need for a stay to ensure that no enforcement action was initiated by EPA or undertaken in response to citizen suits, during the reconsideration of the leak repair requirements. The commenter was particularly concerned with the potential for unfair imposition of penalties during the pendency of the reconsideration. The commenter stated that while compliance personnel may have been advised of the settlement agreement, they are not legally required to refrain from imposing penalties. Penalties stemming from actions undertaken during reconsideration could be substantial.

VI. Response to Comments

EPA agrees with the five commenters concerning the need for a stay. EPA believes that it is essential to continue staying the effectiveness of § 82.156(i) and the applicable compliance dates, as these provisions relate to industrial process refrigeration equipment only. Therefore, through this action, EPA is extending the stay of § 82.156(i) and the applicable compliance dates, for industrial process refrigerant only, until EPA completes reconsideration of these regulations in accordance with the settlement agreement reached between EPA and CMA. This stay will expire when the final action regarding § 82.156(i) and compliance dates, with respect to industrial process refrigeration equipment are completed and effective.

Based on internal Agency review, the regulatory language of this stay has been slightly modified for purposes of clarification.

VII. Effective Date

This action will become effective on December 16, 1994, the date on which the administrative stay expires.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: November 4, 1994.

Carol M. Browner,
Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.156 is amended by revising paragraph (i)(5) to read as follows:

§ 82.156 Required practices.

* * *

(i) * * *

(5) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of the 40 CFR 82.156(i)(1), (i)(3), and (i)(4) as these provisions apply to industrial process refrigeration equipment only is stayed from December 16, 1994, until the EPA takes final action on its reconsideration of these provisions. EPA will publish any such final action in the *Federal Register*.

[FR Doc. 94–28295 Filed 11–16–94; 8:45 am]

BILLING CODE 5560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52e

RIN 0905–AE25

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending the regulations governing grants awarded by the National Heart, Lung, and Blood Institute (NHLBI) for prevention and control projects in order to conform the

regulations to minor changes made to the NHLBI authority by the NIH Revitalization Act of 1993 and add a reference to the NIH policy on the inclusion of women and minorities as subjects in clinical research.

EFFECTIVE DATE: This amendment is effective on November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892–0001, telephone (301) 496–2832 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 419 of the PHS Act authorizes NHLBI to make prevention and control grants. Section 505 of the NIH Revitalization Act of 1993, which was enacted on June 10, 1993, amended section 419 of the Public Health Service (PHS) Act by making minor changes to the NHLBI Prevention and Control authority. The NIH Revitalization Act of 1993 also added section 492B to the PHS Act which requires the Director of NIH, in conjunction with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, to establish guidelines on the inclusion of women and minorities as subjects in clinical research supported by NIH. In a notice published in the *Federal Register* of March 28, 1994 (59 FR 14508), NIH announced the establishment of those guidelines. Additionally, in a notice published in the *Federal Register* of March 7, 1994 (59 FR 10648), the Assistant Secretary for Health enunciated PHS policy concerning the establishment and maintenance of a smoke-free workplace and the promotion of the non-use of tobacco products by recipients of PHS grants. Further, Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products.

We are amending regulations at 42 CFR part 52e governing grants for prevention and control projects to refer to the NIH policy on the inclusion of women and minorities as subjects in clinical research, and to make minor changes in the NHLBI Prevention and Control authority. Specifically, we are amending § 52.8 by adding the word “policies” to the heading and amending the text of § 52e.8 by adding reference

to the new NIH guidelines on the inclusion of women and minorities as subjects in clinical research. We are also revising paragraphs (a)(1) and (b) of § 52e.1 to conform them to amended section 419 of the PHS Act.

Notice, public comment, and delayed effective date procedures are being waived for this amendment based on a finding of good cause. These procedures for ensuring public participation in the rulemaking process and time for compliance are unnecessary because the substantive changes have already been made by the NIH Revitalization Act and this technical amendment changes the regulation to conform with the statutory changes. Similarly, the addition of a reference to a recently issued policy does not impose any new substantive requirements upon applicants.

The following statements are provided for information of the public.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires us to prepare an analysis for any rule that meets one of the E.O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments, or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, we prepare a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this rule is not inconsistent with the actions of any other agency.

This rule makes minor changes to conform existing regulations to the current statute and to refer to a recently issued NIH policy. While these grants benefit those segments of the public afflicted by heart, blood vessel, lung, and blood diseases, and community-

based and population-based programs carried out in cooperation with other Federal agencies, with public health agencies of State or local governments, with nonprofit private entities that are community-based health agencies, or with other appropriate public or nonprofit private entities, these grants do not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this rule would only affect those few institutions interested in obtaining financial assistance to carry out authorized prevention and control projects, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support.

For these same reasons, we certify this rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by this rule are:

93.837—Heart and Vascular Diseases Research

93.838—Lung Diseases Research

93.839—Blood Diseases and Resources Research

List of Subjects in 42 CFR Part 52e

Grant programs—Health; Health; Medical research.

Dated: October 28, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: November 8, 1994.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, part 52e of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1. The authority citation for part 52e continues to read as follows:

Authority: 42 U.S.C. 216, 285b-1.

2. In § 52e.1 paragraphs (a)(1) and (b) are revised to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) * * *

(1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the prevention and control of heart, blood vessel, lung, and blood diseases, with special consideration given to the prevention

and control of these diseases in children, and in populations that are at increased risk with respect to such diseases;

(2) * * *

(3) * * *

(b) For purposes of this part, prevention and control projects shall include community-based and population-based programs carried out in cooperation with other Federal agencies, with public health agencies of State or local governments, with nonprofit private entities that are community-based health agencies, or with other appropriate public or nonprofit private entities.

3. Section 52e.8 is amended by adding the words "and policies" to the heading following the word "regulations" and, immediately after the reference to the PHS Policy on Humane Care and Use of Laboratory Animals, by adding as the last item a reference to the NIH Guidelines on the Inclusion of Women and Minorities as Human Subjects in Clinical Research, to read as follows:

§ 52e.8 Other HHS regulations and policies that apply.

* * * * *

59 FR 14508 (as republished March 28, 1994), as may be amended, or its successor—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research.

[FR Doc. 94-28323 Filed 11-16-94; 8:45 am]

BILLING CODE 4140-01-M

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid

Administration for Children and Families

45 CFR Part 233

RIN 0970-AA07

Aid to Families With Dependent Children; Extension of Medicaid When Support Collection Results in Termination of Eligibility

AGENCIES: Administration for Children and Families (ACF) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final rules interpret section 20 of the Child Support Enforcement Amendments of 1984, as amended by section 303(e) of the Family Support Act of 1988, and section 8003 of the Omnibus Budget Reconciliation Act of 1989. The 1984 law extended

Medicaid coverage for a period of four months to certain dependent children and adult relatives who become ineligible for Aid to Families with Dependent Children (AFDC) as a result, wholly or partly, of the collection or increased collection of child or spousal support under title IV-D of the Social Security Act (the Act). The regulations are applicable to the AFDC and Medicaid programs in all jurisdictions. **EFFECTIVE DATE:** November 17, 1994.

FOR FURTHER INFORMATION CONTACT:

AFDC: Mr. Mack Storrs, ACF/OFA 5th Floor, 370 L'Enfant Promenade S.W., Washington, DC 20447, telephone (202) 401-9289.

Medicaid: Mr. Marinos T. Svolos, HCFA Room 323, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (410) 966-4451.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 20 of the Child Support Enforcement Amendments of 1984 (Public Law 98-378) amended both the AFDC and Medicaid titles of the Act. Title IV-A (AFDC) was amended by adding a new paragraph (h) to section 406 of the Act. This new paragraph provides that: "[e]ach dependent child and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under Part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins."

Section 20 of Public Law 98-378 also amended section 1902(a)(10)(A)(i)(I) to require Medicaid coverage of eligible individuals pursuant to section 406(h) of the Act. Both amendments apply only to those individuals who became ineligible for AFDC on or after August 16, 1984, the date of enactment of Public Law 98-378, and before October 1, 1988, and who received AFDC in at least three of the six months immediately preceding the month of ineligibility.

Section 303(e) of the Family Support Act of 1988 (Public Law 100-485) amended section 20 of the Child Support Enforcement Amendments of

1984 to extend for one year, through September 30, 1989, the authority of this provision. Section 8003 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) removed the sunset date for this section, thus making it a permanent provision of the Act.

Notice of Proposed Rulemaking (NPRM)

A NPRM was published in the *Federal Register* on November 27, 1992 (57 FR 56294), amending 45 CFR Part 233 and 42 CFR Parts 435 and 436 to set forth the circumstances under which individuals become eligible for the four-month period of extended Medicaid coverage because they have lost AFDC as a result (wholly or partly) of the collection or increased collection of child or spousal support. The proposed rules interpreted the statute to require either the new receipt of, or an increase in, the collection of child or spousal support which renders the family ineligible for AFDC.

As required by statute, the proposed rules provide that individuals must have received AFDC in at least three of the six months immediately preceding the month in which AFDC ineligibility begins in order to qualify for the extended Medicaid coverage. As we pointed out in the preamble to the proposed rules, individuals who do not actually receive an AFDC payment for any month because of the rounding of the payment amount to zero, the recoupment of an overpayment, or the elimination of payments for those who are eligible for amounts less than \$10 are deemed to be AFDC recipients for that month for purposes of determining eligibility for continued Medicaid coverage under this provision.

Also under the proposed rules, continued Medicaid under this provision ends for any individual family member who moves to another State. In the preamble to the proposed rules, we stated that Medicaid ends effective with the month following the month the individual moves to the new State. Although benefits end when an individual moves to another State, eligibility can be reinstated in the State in which he or she was entitled to the extended coverage if the individual re-establishes residence there before the end of the four-month period. It was the Department's view that extended Medicaid benefits are available only in the State in which the family became ineligible for AFDC benefits. For example, if a family moved to another State in March, the first month of the extended period, and moved back in May, the third month of the extended period, they would be eligible for

extended Medicaid benefits for the months of May and June.

The preamble to the proposed rules recognized that States require collection of support made by absent parents and spouses to be paid directly to the IV-D agency. Nevertheless, AFDC recipients occasionally receive child or spousal support directly. Because current regulations require that these payments must be turned over to the IV-D agency we consider direct payments which are properly turned over to the IV-D agency to be collections of support for the purposes of this provision. Thus, extended Medicaid coverage will be provided when collections of child or spousal support are received by the eligible assistance unit and are turned over to the IV-D agency if these payments result (wholly or partly) in the loss of AFDC.

The proposed rules indicated that section 406(h) of the Act provides certain individuals with extended Medicaid if they lose AFDC eligibility "as a result (wholly or partly) of the collection or increased collection of child or spousal support * * *" (emphasis added). They separately specified the circumstances under which AFDC ineligibility would be considered to be due "wholly" to a collection and when they would be considered to be due "partly" to a support collection. They also discussed at length examples of cases in which the child or spousal support collection "wholly" or "partly" affected the family's AFDC eligibility and made a clear distinction between the "wholly" or "partly" cases.

Our interpretation of Congressional intent as it relates to the term "wholly" or "partly" limits the Medicaid extension under this provision to cases where ineligibility can be attributed, at least partly, to the initiation of or an increase in the amount of a child or spousal support collection. The proposed and final regulations both reflect our position that the collection of support must actually cause or actively contribute to ineligibility for AFDC, even if there are other factors which also contribute to ineligibility or could simultaneously cause it.

The proposed rules provided that extensions of Medicaid eligibility pursuant to expiration of the earnings disregards as set forth in 45 CFR 233.20(a)(14) or pursuant to section 303(a) of the Family Support Act of 1988 (P.L. 100-485) are not affected by this provision. Thus, if a family is entitled to extended Medicaid as a result of earned income under section 303(a) and is also simultaneously entitled to extended Medicaid as a

result of the initiation of or a change in the amount of the child or spousal support collection, the assistance unit would be entitled to the full twelve-month extension of Medicaid available under the section 303(a) transitional provision if it meets the requirements of section 1925 of the Act. However, the periods run concurrently so that one extended period cannot be delayed until the end of the other extended period.

Response to Specific Individual Comments

We received five comments on the proposed rules. Three were from State government agencies, one was from an advocacy group and one was from a health services organization. A discussion of these comments and our responses follows.

Comment: One advocacy group requested that the Department clarify the definition of support collections which would trigger entitlement to extended Medicaid coverage. It recommended that the change must be in the amount of support collected. The advocacy group was concerned that the language in the discussion of the proposed regulations referring to an increase in the "ongoing support payment" may be read as referring to an increase in the amount the absent parent has to pay, rather than an increase in the amount which is collected in a given month.

Response: We have eliminated any reference to an increase in an "ongoing support payment." We believe this will eliminate any confusion between support ordered and support collected. The amount of support ordered is not material when establishing eligibility for extended benefits. This eligibility is based on the amount of support which is collected.

Comment: One State agency recommended a change in the definition of "collection" of child or spousal support to cover situations where collections of child or spousal support contribute to a loss of eligibility but no initiation of or increase in collections occurred. Another State agency believed that the proposed definition is more restrictive than the wording of the statute and that there was no legislative history presented to conclude that Congress intended to define the entitlement as narrowly as proposed.

Response: As a condition of extended Medicaid coverage, the final regulations continue to require that ineligibility for AFDC must result from a change in support collection; that is, either the new receipt of, or an increase in, the amount of a child or spousal support collection. As we stated in the preamble

to the proposed rules, we believe that the Conference Report, H.R. Rep. No. 925, 98th Cong., 2d Sess. (1984), contemplates a change in the amount of the child or spousal support collection. In describing the House bill, the Conference Report states that "[i]f a family loses AFDC eligibility as the result (wholly or partly) of increased collection of support payments * * *, the State must continue to provide Medicaid benefits * * *." *Id.* at 55 (emphasis added). The Conference Agreement followed the House bill, but with an amendment limiting the application of the provision to families who become ineligible for AFDC before October 1, 1988.

Similarly, the Report of the Committee on Ways and Means, H.R. Rep. No. 527, 98th Cong., 1st Sess. at pages 11, 23, 52, and 56 refers repeatedly to either an "increase in child support payments" or to "a change in child support levels."

Comment: Two State agencies believed that the definition of "collection" was convoluted, unnecessarily complex, and difficult to administer. One agency believed the definition would make automation more difficult and expensive.

Response: We believe that any difficulty in the proposed definition stemmed from our attempt to interpret the law broadly. The interpretation requires States to compare the different possible causes for the loss of AFDC, but was designed to allow continued eligibility under a number of different circumstances.

We could have interpreted section 406(h) to mean that continued eligibility is available only when changes in support collections alone lead to a loss of AFDC. Extended coverage would not have been available if any other factors contributed to or caused ineligibility. We instead chose to cover individuals who lose AFDC under any circumstances in which the change in support either causes or contributes to the loss of AFDC. This interpretation, by its nature, has increased the complexity of the rule.

We have attempted in the final regulation to express these concepts more simply and concisely. We have done so by removing the emphasis in the proposed regulation on the distinction between the loss of AFDC which results "wholly" instead of "partly" from support collections. Instead, we have placed the emphasis on extended Medicaid whenever a support collection has either caused or actively contributed to the loss of AFDC. As in the proposed regulation, a family can qualify for extended Medicaid when

the support collection alone causes ineligibility for AFDC or when the support collection, in conjunction with other changes in income or family circumstances, contributes to ineligibility. The following examples demonstrate these concepts, as we have revised them. They are keyed to the regulations at §§ 435.115(h)(1), 436.114(h)(1) and 233.20(a)(15)(iii)(A).

An example of how the final rule would apply in §§ 435.115(h)(1)(i), 436.114(h)(1)(i) and 233.20(a)(15)(iii)(A)(1) is an assistance unit which receives \$250 in countable child support collections monthly. The applicable standard of need is \$375. In the next month the countable child support collection increases to \$400. In this example, the resulting ineligibility is due to the collection of child support, and the Medicaid extension would apply.

Another illustration includes a situation which conforms to §§ 435.115(h)(1)(i), 436.114(h)(1)(i) and 233.20(a)(15)(iii)(A)(1) of the final regulations. An assistance unit receives \$200 in countable child support collections and \$100 in title II benefits monthly. The applicable standard of need is \$325. In the next month both the child support collection and title II increase by \$75, for a total increase of \$150 a month. Here, the resulting ineligibility is due to the child support collection because the change in support by itself, when added to the unchanged title II benefit, would cause ineligibility. Thus, the Medicaid extension would apply.

An example of how the definition of "collection" applies in combination with other changes in family circumstances, as indicated in §§ 435.115(h)(1)(ii), 436.114(h)(1)(ii) and 233.20(a)(15)(iii)(A)(2), would be as follows. An assistance unit received \$275 in countable child support collections and the applicable standard of assistance was \$375. In the next month, the countable child support collection increased to \$325 and at the same time one of the older children left home. As a result, the applicable standard of assistance was reduced to \$300. The countable child support collection of \$325 exceeded the new standard of \$300 and resulted in the assistance unit's ineligibility.

Under the clarified definition of "collection" in the final regulation, the family would be eligible for extended Medicaid, since the collection of child support increased and contributed to the ineligibility. In this instance, the reduction in the standard of assistance worked in combination with the increased collection of support to cause

the ineligibility. It thus contributed to the family's ineligibility. Neither change would have caused ineligibility by itself.

However, suppose that in this example the \$275 received by the assistance unit was raised to \$325 and the \$375 standard of assistance was reduced to \$250. In this case, the increase in child support would have no effect on eligibility for AFDC. That is because the change in the standard of assistance would have caused ineligibility even before the child support collection was raised from \$275 to \$325. Because the change in the support collection neither caused nor contributed to ineligibility for AFDC, the family would not be eligible for extended Medicaid.

Thus, under the definition included in the final rule, other changes affecting eligibility and occurring in conjunction with a change in the amount of the support collection would not negate the family's entitlement to extended Medicaid, as long as the support collection contributes to ineligibility for AFDC.

Comment: One State questioned the discussion of payments made by absent parents directly to the AFDC recipient. The State asserted that if these payments are turned in as required, the money flows through the child support mechanism as would money collected by the State directly from the absent parent. As such it represents a "collection" under title IV-D. If the money is not forwarded to the State agency, it is budgeted accordingly (as income to the family), and penalties (for non-cooperation) are imposed as appropriate. The regulations are silent on the issue of monies not forwarded so the State assumes there is no intent to provide the extension when the support causes ineligibility when budgeted, since to provide such an extension in this case would be contrary to the statute.

Response: There is no intent to provide the extension in such situations. The State is correct that monies not forwarded to the State agency would not constitute a "collection" under title IV-D, as required by the statute. Such monies would be budgeted as income to the family in a IV-A income State, with sanctions for non-cooperation imposed as appropriate. In a IV-D recovery State, the IV-D agency must recover all such payments. The IV-D agency would enter into a repayment agreement with the custodial parent in accordance with 45 CFR 303.80. We have revised the regulation in several places in order to make it clear that support collections

must be child or spousal support collected under title IV-D.

Comment: One State agency commented that, given the erratic nature of child support payments, the proposed policy could result in disparate treatment for clients with equal amounts of child support. Another State agency expressed concern that the application of the proposed regulations may provide an incentive for an absent parent not to pay child support when a child is approaching the age of majority or some other income change is expected to occur.

Response: Because of the sporadic nature of the receipt of support payments and other changes in family circumstances, it would be difficult to determine when such a situation might occur. Nevertheless, it is true that, in some cases, an increase in support collection would coincide with other circumstances affecting AFDC eligibility. The statute places no special requirements on the circumstances which resulted in the increased support collection which, in turn, triggered the four-month period. If a family receives a change in support payments which in some way causes that family to lose AFDC, regardless of the circumstances, then that family is entitled to four extra months of Medicaid coverage. The statute places no relevance on the regularity or timing of payments.

Comment: Two commenters suggested that extended Medicaid should be continued when a family or individual moves out of the State and is no longer a resident of the State. One commenter suggested that the State where the individual was originally eligible for extended Medicaid should be responsible for providing any remaining months of extended Medicaid, particularly where the individual was enrolled in a managed care organization. The other commenter suggested that the new State should be automatically responsible for paying for the remaining months of the extended period.

Response: In the preamble to the notice of proposed rulemaking, HCFA took the position that "[c]ontinued Medicaid under this provision ends for any individual who moves to another State." The preamble further provided, however, that eligibility could be reinstated if the individual returns to the State and the individual would be entitled to any remaining months of extended benefits. We believe that it is reasonable to allow States to terminate families who become residents of other States during the extended Medicaid period.

Nothing in section 406(h) explicitly requires a State to continue extended

benefits for an individual who has moved to another State. In addition, our interpretation of this provision conforms with the longstanding policy that States are only required to provide Medicaid to their own residents. The Medicaid statute establishes a framework of cooperative federalism in which each state develops a plan for providing medical assistance for its residents. The statute establishes a general framework for the State's Medicaid program; however, States have some flexibility to tailor the program to meet the particular needs of their residents. As a result, each State plan is different.

From the outset of the Medicaid program, State residency has been an important aspect of Medicaid eligibility. Section 1902(b)(2), 42 U.S.C. section 1396a(b)(2), prohibits the Secretary from approving a plan which imposes any residency requirement which excludes individuals who reside in the State, regardless of whether or not the residence is maintained permanently or at a fixed address. On the other hand, there has never been any general statutory requirement that a State cover individuals who are not its residents or continue to cover those who are no longer its residents. Indeed, section 1902(b)(2) implicitly recognizes that States may limit Medicaid coverage to their own residents.

Moreover, the statute requires the State plan to include provisions for furnishing medical assistance under the plan "to individuals who are residents of the State but are absent therefrom" (section 1902(a)(16); 42 U.S.C. section 1396a(a)(16)). This provision recognizes a State's continued responsibility for its Medicaid eligible residents during temporary periods of absence in another jurisdiction, but only as long as they remain residents. In light of these rules, we have for many years taken the position that the Secretary is permitted to approve a plan which limits eligibility to all State residents and consequently denies medical assistance to individuals who do not reside in the State. It is our understanding that most States expressly require individuals to be residents of the State in order to receive medical assistance under the State plan, although they could choose to cover non-residents.

The right to continued receipt of Medicaid normally ends when an individual establishes residency in a new State. If an individual seeks medical assistance in the new State, eligibility is determined based on the State plan of the new State. If Congress had intended in section 406(h) a major departure from this traditional role of

States under the Medicaid statute, we believe this would have been clear from either the statute or legislative history. Our review of the statute and the legislative history for section 406(h) does not reflect that Congress intended this result.

We also do not believe that section 406(h) requires an individual's new State of residence to provide continued Medicaid coverage. This provision simply deems an individual to be an AFDC recipient for Medicaid purposes for an additional four calendar months; that is, as an add-on to the period of coverage the individual has already received under the State plan of his or her original State. HCFA does not regard section 406(h) as creating a portable status that entitles the individual to different Medicaid coverage in a different State.

The fact that an individual is an AFDC recipient in State A does not get that individual Medicaid benefits in State B. Similarly, the fact that an individual is deemed to be an AFDC recipient in State A would not necessarily get that individual Medicaid benefits in State B (unless State B chooses to cover the individual or has an interstate agreement which does so). If the individual is deemed to be an AFDC recipient for Medicaid purposes for an additional four months, the individual should therefore receive extended Medicaid only in the State in which he or she lost AFDC status and was granted the four months of extended coverage.

One commenter also raised the question of whether our policy has constitutional implications because the commenter believes that it violates an individual's right to interstate travel. The commenter points out that other residents in the new State would be eligible for extended benefits while the newly arrived individuals with exactly the same circumstances would not be eligible. We believe that the commenter is incorrect in assuming that the individual who has moved is equally situated with other residents of the new State who are receiving the additional four months of Medicaid. The individual's former State may well have had a higher AFDC eligibility standard than the new State, which enabled the individual to get Medicaid in the old State before he or she lost AFDC because of a support payment. In the new State, the individual may never have been eligible for AFDC even without the increased collection.

We do not believe the residency requirement for extended Medicaid has any significant effect on managed care. Ordinarily, an HMO will lose an

enrollee when he or she has moved to another State, because HMOs have defined service areas and provider networks. In most cases, when a recipient enrolled in an HMO moves to another State, he or she would no longer be in the service area of the HMO. As such, the recipient would no longer be qualified to remain in the HMO, regardless of the residency requirement. In addition, the effect of the residency requirement on recipients of extended Medicaid is no different from the effect of the residency requirement on any Medicaid eligible HMO recipient who moves from the State.

Regulatory Procedures

Executive Impact Analysis

These regulations have been reviewed pursuant to Executive Order 12866 to ensure their consistency with the priorities and principles set forth in that Executive Order. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while achieving the regulatory objectives.

Paperwork Reduction Act

There will be no reporting or record keeping requirements imposed on the public or States which would require clearance by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these final rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act (RFA), is not required.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, reporting and record keeping, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.780, Assistance Payments Maintenance Assistance.)

Dated: April 4, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Dated: April 24, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: November 4, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, parts 435 and 436 of chapter IV, title 42 and part 233 of chapter II, title 45, Code of Federal Regulations, are amended as set forth below:

Health Care Financing Administration

42 CFR Chapter IV

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.115 is amended by adding new paragraphs (f), (g), and (h) to read as follows:

§ 435.115 Individuals deemed to be receiving AFDC.

* * * * *

(f) The State must deem an individual to be receiving AFDC if a new collection or increased collection of child or spousal support under title IV-D of the Social Security Act results in the termination of AFDC eligibility in accordance with section 406(h) of the Social Security Act. States must continue to provide Medicaid for four consecutive calendar months, beginning with the first month of AFDC ineligibility, to each dependent child and each relative with whom such a child is living (including the eligible spouse of such relative as described in section 406(b) of the Social Security Act) who:

(1) Becomes ineligible for AFDC on or after August 16, 1984; and

(2) Has received AFDC for at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(3) Becomes ineligible for AFDC wholly or partly as a result of the initiation of or an increase in the amount of the child or spousal support collection under title IV-D.

(g)(1) Except as provided in paragraph (g)(2) of this section, individuals who are eligible for extended Medicaid lose this coverage if they move to another State during the 4-month period. However, if they move back to and reestablish residence in the State in which they have extended coverage, they are eligible for any of the months remaining in the 4-month period in which they are residents of the State.

(2) If a State has chosen in its State plan to provide Medicaid to non-residents, the State may continue to provide the 4-month extended benefits to individuals who have moved to another State.

(h) For purposes of paragraph (f) of this section:

(1) The new collection or increased collection of child or spousal support results in the termination of AFDC eligibility when it actively causes or contributes to the termination. This occurs when:

(i) The change in support collection in and of itself is sufficient to cause ineligibility. This rule applies even if the support collection must be added to other, stable income. It also applies even if other independent factors, alone or in combination with each other, might simultaneously cause ineligibility; or

(ii) The change in support contributes to ineligibility but does not by itself cause ineligibility. Ineligibility must result when the change in support is combined with other changes in income or changes in other circumstances and the other changes in income or

circumstances cannot alone or in combination result in termination without the change in support.

(2) In cases of increases in the amounts of both support collections and earned income, eligibility under this section does not preclude eligibility under 45 CFR 233.20(a)(14) or section 1925 of the Social Security Act (which was added by section 303(a) of the Family Support Act of 1988 (42 U.S.C. 1396r-6)). Extended periods resulting from both an increase in the amount of the support collection and from an increase in earned income must run concurrently.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for Part 436 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.114 is amended by adding new paragraphs (f), (g), and (h) to read as follows:

§ 436.114 Individuals deemed to be receiving AFDC.

(f) The State must deem an individual to be receiving AFDC if a new collection or increased collection of child or spousal support under title IV-D of the Social Security Act results in the termination of AFDC eligibility in accordance with section 406(h) of the Social Security Act. States must continue to provide Medicaid for four consecutive calendar months, beginning with the first month of AFDC ineligibility, to each dependent child and each relative with whom such a child is living (including the eligible spouse of such relative as described in section 406(b) of the Social Security Act) who:

(1) Becomes ineligible for AFDC on or after August 16, 1984; and

(2) Has received AFDC for at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(3) Becomes ineligible for AFDC wholly or partly as a result of the initiation of or an increase in the amount of a child or spousal support collection under title IV-D.

(g)(1) Except as provided in paragraph (g)(2) of this section, individuals who are eligible for extended Medicaid lose this coverage if they move to another State during the 4-month period. However, if they move back to and reestablish residence in the State in which they have extended coverage,

they are eligible for any of the months remaining in the 4-month period in which they are residents of the State.

(2) If a State has chosen in its State plan to provide Medicaid to non-residents, the State may continue to provide the 4-month extended benefits to individuals who have moved to another State.

(h) For purposes of paragraph (f) of this section:

(1) The new collection or increased collection of child or spousal support results in the termination of AFDC eligibility when it actively causes or contributes to the termination. This occurs when:

(i) The change in support collection in and of itself is sufficient to cause ineligibility. This rule applies even if the support collection must be added to other, stable income. It also applies even if other independent factors, alone or in combination with each other, might simultaneously cause ineligibility; or

(ii) The change in support contributes to ineligibility but does not by itself cause ineligibility. Ineligibility must result when the change in support is combined with other changes in income or changes in other circumstances and the other changes in income or circumstances cannot alone or in combination result in termination without the change in support.

(2) In cases of increases in the amounts of both the support collections and earned income, eligibility under this section does not preclude eligibility under 45 CFR 233.20(a)(14) or section 1925 of the Social Security Act (which was added by section 303(a) of the Family Support Act of 1988 (42 U.S.C. 1396r-6)). Extended periods resulting from both an increase in the amount of the support collection and from an increase in earned income must run concurrently.

Administration for Children and Families

45 CFR Chapter II

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 606 note, 607, 1202, 1302, 1352 and 1382 note; sec. 6 of Pub. L. 94-114, 89 Stat. 579; Part XXIII of Pub. L. 97-35, 95 Stat. 843; Pub. L. 97-248, 96 Stat. 324; Pub. L. 99-603, 100 Stat. 3359; and sec. 1883 of Pub. L. 99-514, 100 Stat. 2916.

2. Section 233.20 is amended by adding a new paragraph (a)(15) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(15) For Medicaid eligibility only, pursuant to section 406(h) of the Act:

(i) Each dependent child and each relative with whom such a child is living (including the eligible spouse of such relative pursuant to section 237.50(b) of this chapter) who becomes ineligible for AFDC wholly or partly because of the initiation of or an increase in the amount of a child or spousal support collection under title IV-D will be deemed to be receiving AFDC, but only for purposes of this paragraph (a)(15), for a period of four consecutive calendar months beginning with the first month of AFDC ineligibility. To be eligible for extended Medicaid coverage pursuant to this paragraph (a)(15), each dependent child and relative must meet the following conditions:

(A) The individual must have become ineligible for AFDC on or after August 16, 1984; and

(B) The individual must have received AFDC in at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(C) The individual must have become ineligible for AFDC wholly or partly as a result of the initiation of or an increase in the amount of a child or spousal support collection under title IV-D.

(ii)(A) Except as provided in paragraph (a)(15)(ii)(B) of this section, individuals who are eligible for extended Medicaid lose this coverage if they move to another State during the 4-month period. However, if they move back to and reestablish residence in the State in which they have extended coverage, they are eligible for any of the months remaining in the 4-month period in which they are residents of the State.

(B) If a State has chosen in its State plan to provide Medicaid to non-residents, the State may continue to provide the 4-month extended benefits to individuals who have moved to another State.

(iii) For purposes of paragraph (i) of this section:

(A) The new collection or increased collection of child or spousal support results in the termination of AFDC eligibility when it actively causes or contributes to the termination. This occurs when:

(1) the change in support collection in and of itself is sufficient to cause ineligibility. This rule applies even if the support collection must be added to other, stable income. It also applies even if other independent factors, alone or in

combination with each other, might simultaneously cause ineligibility; or

(2) The change in support contributes to ineligibility but does not by itself cause ineligibility. Ineligibility must result when the change in support is combined with other changes in income or changes in other circumstances and the other changes in income or circumstances cannot alone or in combination result in termination without the change in support.

(B) In cases of increases in the amounts of both the support collections and earned income, eligibility under this section does not preclude eligibility under paragraph (a)(14) of this section or section 1925 of the Social Security Act (which was added by section 303(a) of the Family Support Act of 1988 (42 U.S.C. 139r-6)). Extended periods result from both an increase in the amount of the support collection and from an increase in earned income must run concurrently.

* * *

[FR Doc. 94-28317 Filed 11-16-94; 8:45 am]
BILLING CODE 4184-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Part 1871****Modification of Test of MidRange Procurement Procedures**

AGENCY: Office of Procurement, NASA.
ACTION: Temporary rule.

SUMMARY: The Office of Federal Procurement Policy approved a test of NASA's MidRange Procurement Procedures in 1993. This modification of the procedures is a result of OFPP's approval to expand the test to all NASA centers and addresses other editorial and substantive changes.

EFFECTIVE DATES: This regulation is effective November 17, 1994, and expires June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358-0431.

SUPPLEMENTARY INFORMATION: The MidRange Procurement Procedures were published in 58 FR 54300, October 21, 1993.

Comments on the test procedure had been requested in 57 FR 57845, December 7, 1992. The following substantive changes are being made to the MidRange Procurement Procedures: (1) Authority to utilize these procedures at all NASA centers is provided, (2) construction and A&E contracts may now be done under MidRange, (3) the Best Value Selection procedures have

been simplified to limit the value characteristics, and (4) the Electronic Bulletin Board aspects of MidRange have been clarified since we will be using Internet in lieu of a separate bulletin board. The use of the Electronic Bulletin Board was approved as part of the Federal Acquisition Streamlining Act. NASA is in the process of developing the Bulletin Board and will provide industry notice of its use through the Commerce Business Daily. NASA will continue publishing synopses in the Commerce Business Daily until that notice is provided.

List of Subjects in 48 CFR Part 1871**Government Procurement.**

Thomas S. Luedtke,
Deputy Associate Administrator for Procurement.

Accordingly, under the authority of 42 U.S.C. 2473(c)(1), 48 CFR ch. 18 is amended by revising part 1871 to read as follows:

PART 1871—MIDRANGE PROCUREMENT PROCEDURES**1871.000 Scope of part.****Subpart 1871.1—General**

- 1871.101 Purpose.
- 1871.102 Authority.
- 1871.103 Applicability.
- 1871.104 Definitions.
- 1871.105 Policy.

Subpart 1871.2—Planning and Requirements Process

- 1871.201 Use of buying team.
- 1871.202 Organizational responsibilities.
- 1871.202-1 Requiring organization.
- 1871.202-2 Procurement organization.
- 1871.202-3 Supporting organizations.
- 1871.202-4 Center management.
- 1871.203 Buying team responsibilities.
- 1871.204 Small business set-asides.

Subpart 1871.3—Publicizing of Solicitation

- 1871.301 Publicizing policy.
- 1871.302 Publicizing procedure.

Subpart 1871.4—Request for Offer (RFO)

- 1871.401 Types of RFO's.
- 1871.401-1 Sealed offers.
- 1871.401-2 Two-step competitive procurement.
- 1871.401-3 Competitive negotiated procurement not using qualitative criteria.
- 1871.401-4 Competitive negotiation using qualitative criteria.
- 1871.401-5 Noncompetitive negotiations.
- 1871.402 Preparation of the RFO.
- 1871.403 Offer preparation period and limitations.
- 1871.404 Protection of offers.
- 1871.405 Model contract.
- 1871.406 RFO by electronic bulletin board.
- 1871.406-1 Methods of disseminating information.
- 1871.406-2 Special situations.
- 1871.406-3 Publicizing and response time.